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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

RICHARD & DARLENE MATTNER,
d/b/a MATTNER FARMS,

Petitioners,

vs

JESUS BUENO, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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PETITIONERS' BRIEF IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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PETITIONERS' BRIEF IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Petitioners seek review of the Sixth Circuit's determination that their failure to comply with the

provisions of the Migrant and Seasonal Agricultural Worker Protection Act, 29 USC §1801, et seq., (hereafter MSAWPA or the Act), despite their lack of knowledge even of the existence of the Act, constitutes an "intentional" violation of the Act giving rise to a private cause of action. Petitioners urged that (a) the Sixth Circuit has defined an intentional violation in contradiction to the definitional standard established by this Court, and (b) that the definition applied by the Sixth Circuit conflicts with the definitional standard applied by other Circuits.

Respondents' argument is more nearly directed toward the merits of the issues rather than to the appropriateness of certiorari. Respondents assert that review is inappropriate and unnecessary because Congress enacted

the MSAWPA private cause of action primarily as a means of promoting enforcement of the remedial purpose of the Act. Respondents argue that to condition "liability on awareness of a statutory proscription ... would be inconsistent with the remedial purpose of the statute and be contrary to Congress' efforts to strengthen enforcement..."[1] And since no case exists "which holds that knowledge of ... MSAWPA is necessary to award damages...," Respondents assert, there can be no "... conflict with any decision of this Court or common law."[2] Moreover, say Respondents, the Sixth Circuit's definition of intentional comports with the judicial definitions

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[1]Respondents' Brief in Opposition, page 11.

[2]Respondents' Brief in Opposition, page 4.

given "intentional" conduct under the Farm Labor Contractor Registration Act (FLCRA), the definitional standard intended by Congress to be applicable under MSAWPA.[3]

It is to address this new and further argument raised by Respondents' brief that Petitioners file this brief in reply.

ASCERTAINMENT OF STATUTORY INTENT: WHETHER THE DECISION OF THE SIXTH CIRCUIT COMPORTS THEREWITH ONLY JUSTIFIES GRANT OF CERTIORARI.

MSAWPA was enacted into law in January of 1983.[4] While the Act repealed the former Farm Labor Contractor Registration Act of 1963,[5] it substantially reenacted the provisions

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[3]Respondents' Brief in Opposition, pages 5, 7.

[4]29 USC §1874.

[5]29 USC §1873.

of the prior statute and imposed for the first time on agricultural employers the many disclosure duties previously demanded only of the farm labor contractor.

To enforce the Act, Congress created a three tier structure: (1) criminal sanctions for one "wilfully and knowingly" in violation of the Act;[6] (2) administrative sanctions in the case of "a violation" (strict liability) of the Act;[7] and, (3) a private right of action for "any person aggrieved" by one who "intentionally" violates the Act[8]. Three distinct manner of violations were recognized and separately treated by Congress: the wilful violation, the

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[6] 29 USC §1851(a)

[7] 29 USC §1853(a)(1)

[8] 29 USC 1854(c)(1)

intentional violation, and the mere violation.[9]

The term "intentional" is not defined within MSAWPA, but legislative history indicates that Congress intended continuity of the analogous FLCRA grant of a private cause of action for intentional violations.[10] As originally enacted in 1963, FLCRA made no provision for civil enforcement and it was not until 1974 that Congress amended FLCRA to permit a private cause of action for intentional violations.[11]

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[9]This Court recognized in Smith v Wade, 461 US 30, 54 (1982) that Congress might choose to punish intentional violations of the rights of others but forego imposition of liability for a lesser degree of fault.

[10]1982 U.S. Code Cong. & Admin. News 4567

[11]88 Stat. 1657, Dec 7, 1974.

In 1974, when Congress introduced a private remedy for intentional violations of FLCRA, it may be presumed that Congress knew of the common law measure of "intentional" conduct, as described for instance in Cramer v United States, 325 US 1, 31 (1944), to-wit:

> "...every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts."

By late 1982, when Congress was contemplating the enactment of MSAWPA, two cases existed that analyzed the "intentional conduct" required of FLCRA.[12] The case, DeLeon v Ramirez, 465 F Supp at 705, concluded that:

> "intentionally refers to the common civil standard which holds a person liable for the natural consequences of his or

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[12] DeLeon v Ramirez, 465 F Supp 698 (SDNY 1979); Alvarez v Joan of Arc, Inc., 658 F2d 1217 (7th Cir 1981).

> her acts. The courts have adopted this interpretation in stressing the remedial purposes of the Act;"

and the other case, Alvarez v Joan of Arc, Inc., 658 F2d at 1224, defined intentional to mean "conscious or deliberate." In the factual context of each case, the violator knew of the statute and that it governed his conduct.

If we ascribe to Congress a knowledge of these two decisions, we can also presume that Congress also knew that Webster defines "conscious" as a condition of "knowing" and "perceiving" or "apprehending" - a "controlled thought"; and that Webster defines the word "deliberate" as "to ponder" or "to think about with measured careful consideration."[13] It defies logic and

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[13]Webster's 3rd New International Dictionary

common sense that the Fifth Circuit would suggest, in footnote dicta, that an intentional violation of a statutory duty could occur even in the absence of knowledge of the very existence of the Act,[14] and that two years later the Sixth Circuit, in the instant proceedings, would stretch this dicta beyond its point of elasticity and equate any conduct with deliberate and conscious conduct.

Congress did not intend such an equation. It provided an administrative remedy for any violation and restricted a private cause of action to those aggrieved by an intentional violation. Had Congress intended the private cause of action for any violation of the Act-

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[14] Salazar-Calderon v Presidio Valley Farmers Association, 765 F2d 1334, 1345 n.5 (5th Cir 1985).

i.e., strict liability - it could have and would have said so.

The decision of the Sixth Circuit blurs the segregation of violations made by the Congress and for all practical purposes makes any violation an intentional violation. When, Petitioners ask, might a violation through an omission ever be an unintentional act, if a failure to act from lack of any knowledge of the very existence of the statute is an intentional failure. One need only to face the countryside to hear the howls of scorn and ridicule that will arise when farmers are told that if they fail to comply with the provisions of a statute they did not know to exist, they have intentionally violated the statute. And

one can easily understand why agricultural employers will be of like mind with Mr. Bumble.[15]

Petitioners contend that when their conduct is measured against the common law definition of "intentional" supplied by the Court in Cramer v US, infra at 7, then, rephrased, the question is whether Petitioners, standing without knowledge of the existence of MSAWPA, could reasonably have expected that their failure, at time of recruitment or hire, to disclose in writing the place of employment, the wage rates to be paid, the period of employment, etc;[16] might result in intentional statutory violations. Merely to ask the question, Petitioners contend, is to answer it.

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[15] "If the law supposes that" said Mr. Bumble, "... the law is a ass, a idiot." Oliver Twist, Chapter 51.

[16] 29 USC 1831(a)(1)

And such an answer does not put a premium on ignorance, for a real difference exists between knowledge of the existence of an applicable statute and knowledge of its content and meaning. Lack of knowledge, or mistaken knowledge of content and meaning, has never excused a finding of intentional behavior under the common law. In Armour Packing Co v United States, 209 US 56, 65 (1907) this Court recognized that it is only when "intent is not essential, [that] a mistake or ignorance of fact is quite as immaterial as mistake or ignorance of law."

Petitioners contend that it was the obvious purpose of Congress to create a private cause of action limited to those aggrieved by a farmer who, with the knowledge that the statute existed, failed either to learn of the duties it imposed or, if with knowledge, to comply

with those duties. The Sixth Circuit, however, has ordained that any non-compliance with the statute, even in the case where the non-compliance has its genesis in an unawareness of the statute's existence, gives rise to a private cause of action. This dispute over statutory construction, Petitioners submit, warrants the issuance of certiorari rather than supports its denial.

The MSAWPA is a major act of Congress comprehensively governing and directing activities in the labor marketplace between agricultural producers and the migrant labor force that provides so much of the manpower to raise and harvest the nation's vegetables and fruits. The question of what constitutes an intentional violation

under MSAWPA is one of first impression.[17] Certiorari is appropriate in such instances.[18]

So far as Petitioners can with diligence ascertain, no other case[19] involving an intentional violation of a statutory duty, where the term "intentional" is to be measured by common law, has ever been so bold as to suggest that an intentional violation of statutory duty does not require awareness that, in the least, the statute exists. Thus, whether in all remedial legislation proscribing liability for intentional violations of statutory duty, the definitional ramifications given the

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[17] Bueno v Mattner, 829 F2d 1380, 1385 n.4 (6th Cir 1987).

[18] American Federation of Musicians v Wiltstein, 379 US 171, 175 (19); United States v Donovan, 429 US 413, 422 (19).

[19] Except, of course, Salazar-Calderon, infra at 8.

word intentional by the Sixth Circuit will be applied is, Petitioners urge, a matter of major statutory construction with widespread importance and significance. And this fact also speaks for issuance of a writ to review.[20]

CONCLUSION

For the reasons set forth above, Petitioners submit that Respondents' efforts to deny the propriety of appellate review on the basis that the issue is one simply of statutory construction over which there can be no controversy regarding the criteria and outcome, enlarges rather than denies the

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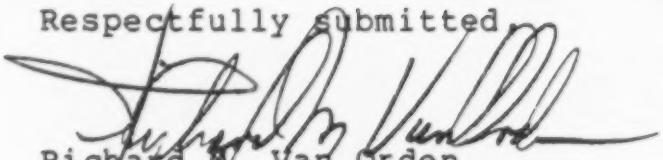
[20] United States v Ruzicka, 329 US 287 (1946); Steelworkers v Usery, 429 US 305 (1976).

need for certiorari and only serves to warrant its grant.

Respectfully submitted,



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